IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN INSOLVENCY

NOTICE OF MOTION NO. 161 OF 2005

IN

NOTICE NO. N/120 OF 2005

Re: J.J. Doshi and anr.
...Judgment debtor

Ex-parte :

Sicom Ltd ...judgment creditors

Mr. Kishore Jain i/by. P.V. Shah
for judgment creditors.
Mr. J.P. Sen iby. T.N. Tripathi
for judgment debtors.

CORAM: S.U. KAMDAR, J.

DATED: 18TH APRIL, 2006.

P.C. :

1. The present notice of motion has been taken out for setting aside the Insolvency notice dated 13.7.2005 served on the judgment debtor.

2. Learned counsel for the judgment debtor in support of the application has pointed out that in

a petition for special Leave to Appeal No. 4241 of 2006 the Supreme Court has granted stay of the recovery proceedings inrespect of the decree on the basis of which the insolvency notice has been issued. In my opinion because of the stay granted it cannot be said that the decree has become final and execution thereof has not been stayed. The provisions of Section 9(2) in turn uses the said terms. Once the execution of the decree has been stayed by the Supreme court by an order dated 10.3.2006 then in that event there is no valid notice and thus the insolvency notice is required to be set aside. However learned counsel for the judgment creditor has contended that the motion should not be made absolute. At the highest, court has power under Section 90 to adjourn the matter for a long period of time on such terms and conditions as it may deem fit and proper. Learned counsel has relied upon sub-section 2 of Section 90 which gives a power to the court to adjourn the proceedings. He has further submitted that the ground for setting aside the insolvency notice are set out in sub-section 5 of Section 9 and the said

provisions are a code by itself. It has been thus submitted that on the ground that the decree has been stayed by the Supreme Court is no ground for granting the motion as that is not the one of the ground specified under Sub-section 5 of the said Act. In my view the provisions of Section 2 of Section 9 provides for a condition precedent for issuance of a notice and it is very clear that a decree where it has not be come final or execution thereof has not been stayed there is no valid notice. In my opinion even if there is a stay granted at a subsequent period of time on the execution of decree then in that event there is no valid notice on the basis of which insolvency notice can be proceeded. In view thereof Notice of Motion is made absolute in terms of prayer clause (a) and (b). However it is made clear that it will be open for the judgment creditor to apply for fresh notice under the Insolvency Act if the decree is upheld by the apex court in the pending proceedings.

sd/-

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